

Trespass

What is criminal trespass?

Criminal trespass can occur when people come onto property when they are not allowed to be there at all, or it might occur when people violate the conditions of entry onto property. In general, conditions of entry are the terms and conditions under which members of the general public may enter onto private property.

What is Criminal Trespass 1st Degree?

“A person is guilty of criminal trespass in the first degree if he or she knowingly enters or remains unlawfully in a *building*.” SMC 12A.08.040.A.1 (Emphasis added.).

“Criminal trespass in the first degree is a gross misdemeanor.” SMC 12A.08.040.A.2. The maximum penalty is 364 days in jail and a \$5,000 fine.

What is Criminal Trespass 2nd Degree?

“A person is guilty of criminal trespass in the second degree if he or she knowingly enters or remains unlawfully in or upon the *premises* of another under circumstances not constituting criminal trespass in the first degree.” SMC 12A.08.040.B.1 (Emphasis added.).

Criminal trespass in the second degree is a misdemeanor. SMC 12A.08.040.B.2. The maximum penalty is 90 days in jail and a \$1,000 fine.

What are the affirmative defenses to criminal trespass?

SMC 12A.08.040.C provides:

In any prosecution under SMC 12A.08.040 A or B, it is an affirmative defense that:

1. A building involved in an offense under Section 12A.08.040 A was abandoned; or
2. The premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises; or

3. The actor reasonably believed that the owner of the premises, or other person empowered to license access thereto, would have licensed him or her to enter or remain; or

4. The actor was attempting to serve legal process, which includes any document required or allowed to be served upon persons or property by any statute, rule, ordinance, regulation, or court order, excluding delivery by the mails of the United States. This defense applies only if the actor did not enter into a private residence or other building not open to the public and the entry onto the premises was reasonable and necessary for service of the legal process.

What are the typical conditions of entry for commercial property?

Conditions of entry are the terms and conditions under which members of the general public may enter onto most commercial property. These terms and conditions generally include:

- Must be a customer or patron;
- Must not violate any laws of the Seattle Municipal Code or Revised Code of Washington; and
- Must enter during business hours.

What happens to someone who violates the conditions of entry?

Individuals who receive notice of the conditions of entry, either by a sign, writing, or orally by someone with the authority to control the conditions of entry, and then subsequently violate those conditions of entry may be arrested for criminal trespass. Typically, however, violators are first warned that they have violated the conditions of entry or that their privilege to be on the property has been revoked, and they are given a chance to leave before being arrested. If they continue to violate the conditions of entry or refuse to leave when asked, they may be arrested for criminal trespass.

Contract Trespass Program

What is the Contract Trespass Program?

The Seattle City Attorney's Office and Seattle Police Department, in conjunction with the Racial Disparity Project, developed new protocols to address trespass issues facing the community. The Contract Trespass Program is an agreement between private property owners, businesses, and the Seattle Police Department to regulate conditions of entry onto their private property. This can include prohibiting people on the property altogether, or it might involve allowing people onto the property only under certain conditions. The conditions that can be enforced through the Contract Trespass Program are listed in the agreements and posted on the premises. By signing a contract with the Seattle Police Department, property owners agree to let police officers warn and then arrest people who continue to violate the conditions when the owners are not present.

Can private residences sign up to be part of the Contract Trespass Program?

No, in general properties commonly open to the general public can join the Contract Trespass Program. Private residences and multi-family housing units are not eligible for the Contract Trespass Program, unless they are vacant.

What is the property owner's responsibility under the trespass program?

Owners have many responsibilities outlined in the agreement. Notably, owners must post signs notifying the public about the conditions of entry for their property, and they must cooperate in the prosecution of those charged with criminal trespass or other crimes. The location of the sign and its warnings can be critical to a successful prosecution. Property owners are encouraged to work with SPD officers and the Precinct Liaison Attorney to make sure their properties are properly signed.

How do I sign up for the Contract Trespass Program?

Business owners should contact their police precinct to obtain a trespass authorization form. This can be done either in person at the precinct or via email. You can direct all questions about this program to the following email addresses:

NPrecinctTrespassProgram@seattle.gov

WPrecinctTrespassProgram@seattle.gov

SPrecinctTrespassProgram@seattle.gov

SWPrecinctTrespassProgram@seattle.gov

EPrecinctTrespassProgram@seattle.gov

Who can issue warnings under the Contract Trespass Program?

For those properties subject to the Contract Trespass Program, a Seattle Police Department officer or a representative of the property owner or lease holder with the authority to control the conditions of entry may warn individuals they have violated the conditions of entry and any future violations may result in an arrest. When it is the private property owner or leasee who notifies the individual of the conditions of entry or revokes an individual's privilege to be on the property, that private property owner or leasee must be willing to cooperate in the prosecution of the criminal trespass case.

Do the trespass warnings expire?

No, once someone is notified about the conditions of entry and is warned they have violated those conditions, the warning does not expire.

Can property owners subject to the Contract Trespass Program still exclude individuals from their property?

Yes, all criminal trespass laws remain in place and a property owner may still exclude someone from their property for any length of time they desire. Someone with the authority to explain the conditions of entry or revoke the privilege to be on the property must be willing to testify in court that he or she revoked the person's privileges to be on the property and that the person refused to leave or returned to the property. Property owners are encouraged to keep detailed records of their interactions with trespassers on their property, especially if they exclude an individual.

Can private property owners who do not participate in the Contract Trespass Program issue trespass warnings?

Private property owners not participating in the Contract Trespass Program may develop their own protocols to regulate the conditions of entry onto their property. For a successful prosecution, someone with the authority to control the conditions of entry and revoke the privilege to be on the property must be willing to testify that the person (1) knew or should have known the conditions of entry, (2) violated the conditions of entry or had their privilege to enter the property revoked, and (3) the person refused to stop the unlawful behavior or leave or they returned to the property after having their privileges revoked. Property owners are encouraged to keep detailed records of the interactions with trespassers on their property.

Can officers arrest violators given trespass warnings by property owners not subject to the Contract Trespass Program?

Yes, all criminal trespass laws remain in place. Officers have the discretion to arrest violators for criminal trespass on any property when they have a cooperative and verified complainant, including on properties not subject to the trespass program.

What criminal charges can be filed for violators of the trespass program?

Criminal Trespass 1st Degree (inside a building) – gross misdemeanor; maximum penalty: 364 days in jail and \$5,000 fine.

Criminal Trespass 2nd Degree (outside a building) – misdemeanor; maximum penalty: 90 days in jail and \$1,000 fine.

Does this trespass program modify any existing criminal trespass laws?

No, the Contract Trespass Program does not replace codified law. Officers may still arrest for violations of SMC 12A.08.040 (Criminal Trespass) on private property regardless of the existence of a trespass warning agreement if someone with the authority to set the conditions of entry or revoke the privilege to be on the property has previously warned the individual of the trespass violation and is willing to testify as a witness.

Parks Trespass Program

What is the Parks Trespass Program?

The City's Parks Trespass Program is similar to the Contract Trespass Program. The Parks Department adopted rules of conduct for City parks and posted them in certain parks. The Seattle Police Department, Park Rangers, and other designees of the Parks Superintendent will explain the conditions of entry and issue criminal trespass warnings to any individual who violates a Park Rule, other local laws, or state law.

In addition, Park Rangers may write citations for particular violations of Park Rules, and police officers may write civil citations for Seattle Municipal Code or Revised Code of Washington offenses or arrest people for criminal activity.

Does the Parks Trespass Program apply to all Parks property?

Yes, the Parks Trespass Program applies to all Park properties.

Does a Parks trespass warning expire?

No, Parks trespass warnings do not expire.

What happens to an individual who violates a Park Rule after being warned of criminal trespass?

If a person receives a trespass warning and refuses to leave or stop the unlawful behavior or returns to any Park property and violates any other applicable rules or laws, the person may be arrested for criminal trespass.

How does a person become excluded from a Park?

Park Ranger and Police Officer Exclusions:

If the conduct that results in a trespass warning creates a significant risk of personal injury or property damage, then the person may be removed and excluded from the park for the remainder of the day.

If the conduct includes a felony or weapons violation, then the person may be excluded for up to one year from Park property.

Court Ordered Exclusions:

During a criminal prosecution, the City Attorney's Office can ask the judge to impose a No Contact Order with a particular park or multiple parks. The No Contact Order may go into effect:

- When the person is charged;
- As a condition of release from jail pending the completion of the criminal case; or
- At sentencing, as part of the sentence or a condition of probation.

What happens to an individual who enters or remains in a park after being excluded during the period of time of the exclusion?

With the exception of protected First Amendment speech, any individual who enters or remains in a park from which he or she has been previously excluded may be arrested and prosecuted for criminal trespass.